

**PART 1228—RESTRICTIONS ON THE ACQUISITION OF, OR TAKING SECURITY INTERESTS IN, MORTGAGES ON PROPERTIES ENCUMBERED BY CERTAIN PRIVATE TRANSFER FEE COVENANTS AND RELATED SECURITIES**

Sec.

1228.1 Definitions.

1228.2 Restrictions.

1228.3 Prospective application and effective date.

1228.4 State restrictions unaffected.

AUTHORITY: 12 U.S.C. 4511, 4513, 4526, 4616, 4617, 4631.

SOURCE: 77 FR 15574, Mar. 16, 2012, unless otherwise noted.

**§ 1228.1 Definitions.**

For the purposes of this part, the following definitions apply:

*Adjacent or contiguous property* means property that borders the burdened community, *provided that* such adjacent or contiguous property may be separated from the burdened community by public right of way.

*Burdened community* means a community comprising all of the parcels or interests in real property encumbered by a single private transfer fee covenant or a series of separate private transfer fee covenants that require payment of private transfer fees to the same entity to be used for the same purposes.

*Covered association* means a nonprofit mandatory membership organization comprising owners of homes, condominiums, cooperatives, manufactured homes, or any interest in real property, created pursuant to a declaration, covenant or other applicable law; or an organization described in section 501(c)(3) or section 501(c)(4) of the Internal Revenue Code. A covered association may include master and sub-associations, each of which is also a covered association.

*Direct benefit* means that the proceeds of a private transfer fee are used exclusively to support maintenance and improvements to encumbered properties, and acquisition, improvement, administration, and maintenance of property owned by the covered association of which the owners of the burdened property are members and used primarily

for their benefit. *Direct benefit* also includes cultural, educational, charitable, recreational, environmental, conservation or other similar activities that—

(1) Are conducted in or protect the burdened community or adjacent or contiguous property, or

(2) Are conducted on other property that is used primarily by residents of the burdened community.

*Enterprises* means, collectively, the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation.

*Excepted transfer fee covenant* means a private transfer fee covenant that requires payment of a private transfer fee to a covered association and limits the use of such transfer fees exclusively to purposes which provide a direct benefit to the real property encumbered by the private transfer fee covenants.

*Federal Home Loan Banks* or *Banks* mean the Federal Home Loan Banks established under section 12 of the Federal Home Loan Bank Act (12 U.S.C. 1432).

*Private transfer fee* means a transfer fee, including a charge or payment, imposed by a covenant, restriction, or other similar document and required to be paid in connection with or as a result of a transfer of title to real estate, and payable on a continuing basis each time a property is transferred (except for transfers specifically excepted) for a period of time or indefinitely. A *private transfer fee* does not include fees, charges, payments, or other obligations—

(1) Imposed by or payable to the Federal government or a State or local government; or

(2) That defray actual costs of the transfer of the property, including transfer of membership in the relevant covered association.

*Private transfer fee covenant* means a covenant that:

(1) Purports to run with the land or to bind current owners of, and successors in title to, such real property; and

(2) Obligates a transferee or transferor of all or part of the property to pay a private transfer fee upon transfer

## § 1228.2

of an interest in all or part of the property, or in consideration for permitting such transfer.

*Regulated entities* means the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, and the Federal Home Loan Banks.

*Transfer* means, with respect to real property, the sale, gift, grant, conveyance, assignment, inheritance, or other transfer of an interest in the real property.

### § 1228.2 Restrictions.

The regulated entities shall not purchase, invest or otherwise deal in any mortgages on properties encumbered by private transfer fee covenants, securities backed by such mortgages, or securities backed by the income stream from such covenants, unless such covenants are excepted transfer fee covenants. The Federal Home Loan Banks shall not accept such mortgages or securities as collateral, unless such covenants are excepted transfer fee covenants.

### § 1228.3 Prospective application and effective date.

This part shall apply only to mortgages on properties encumbered by private transfer fee covenants if those covenants are created on or after February 8, 2011. This part shall not apply to mortgages on properties encumbered by private transfer fee covenants if those covenants are created pursuant to an agreement entered into before February 8, 2011, applicable to land that is identified in the agreement, and the agreement was in settlement of litigation or approved by a government agency or body. This part also applies to securities backed by mortgages to which this part applies, and to securities issued after February 8, 2011, backed by revenue from private transfer fees regardless of when the covenants were created. The regulated entities shall comply with this part not later July 16, 2012.

### § 1228.4 State restrictions unaffected.

This part does not affect state restrictions or requirements with respect to private transfer fee covenants, such

## 12 CFR Ch. XII (1–13 Edition)

as with respect to validity, enforceability, disclosures, or duration.

## PART 1229—CAPITAL CLASSIFICATIONS AND PROMPT CORRECTIVE ACTION

### Subpart A—Federal Home Loan Banks

Sec.

1229.1 Definitions.

1229.2 Determination of a Bank's capital classification.

1229.3 Criteria for a Bank's capital classification.

1229.4 Reclassification by the Director.

1229.5 Capital distributions for adequately capitalized Banks.

1229.6 Mandatory actions applicable to undercapitalized Banks.

1229.7 Discretionary actions applicable to undercapitalized Banks.

1229.8 Mandatory actions applicable to significantly undercapitalized Banks.

1229.9 Discretionary actions applicable to significantly undercapitalized Banks.

1229.10 Actions applicable to critically undercapitalized Banks.

1229.11 Capital restoration plans.

1229.12 Procedures related to capital classification and other actions.

### Subpart B—Enterprises

1229.13 Definitions.

AUTHORITY: 12 U.S.C. 1426, 4513, 4526, 4613, 4614, 4615, 4616, 4617, 4618, 4622, 4623.

SOURCE: 74 FR 5604, Jan. 30, 2009, unless otherwise noted.

### Subpart A—Federal Home Loan Banks

#### § 1229.1 Definitions.

For purposes of this subpart:

*Bank* written in title case, means a Federal Home Loan Bank established under section 12 of the Bank Act (12 U.S.C. 1432).

*Bank Act* means the Federal Home Loan Bank Act, as amended (12 U.S.C. 1421 through 1449).

*Capital distribution* means any payment by the Bank, whether in cash or stock, of a dividend, any return of capital or retained earnings by the Bank to its shareholders, any transaction in which the Bank redeems or repurchases capital stock, or any transaction in which the Bank redeems, repurchases or retires any other instrument which